110TH CONGRESS } HOUSE OF REPRESENTATIVES { REPT. 110–47
1st Session } { Part 1

ACCOUNTABILITY IN CONTRACTING ACT

MARCH 12, 2007.—Ordered to be printed

Mr. WAXMAN, from the Committee on Oversight and Government Reform, submitted the following

R E P O R T

together with

ADDITIONAL VIEWS

[To accompany H.R. 1362]

[Including cost estimate of the Congressional Budget Office]

The Committee on Oversight and Government Reform, to whom was referred the bill (H.R. 1362) to reform acquisition practices of the Federal Government, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

CONTENTS

The amendment is as follows:

Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE AND TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the "Accountability in Contracting Act".

(b) TABLE OF CONTENTS.—The table of contents for this Act is as follows:

TITLE I—LIMITING THE USE OF ABUSE-PRONE CONTRACTS

SEC. 101. LIMITATION ON LENGTH OF NONCOMPETITIVE CONTRACTS.

(a) REVISION OF FAR.—Not later than one year after the date of the enactment of this Act, the Federal Acquisition Regulation shall be revised to restrict the contract period of any contract described in subsection (c) to the minimum contract period necessary—

(1) to meet the urgent and compelling requirements of the work to be performed under the contract; and

(2) to enter into another contract for the required goods or services through the use of competitive procedures.

(b) CONTRACT PERIOD.—The regulations promulgated under subsection (a) shall require the contract period to not exceed 240 days, unless the head of the executive agency concerned determines that exceptional circumstances apply.

(c) COVERED CONTRACTS.—This section applies to any contract in an amount greater than the simplified acquisition threshold entered into by an executive agency using procedures other than competitive procedures pursuant to the exception provided in section 303(c)(2) of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 253(c)(2)) or section 2304(c)(2) of title 10, United States Code.

(d) DEFINITIONS.—In this section:

(1) The term "executive agency" has the meaning provided in section 4(1) of the Office of Federal Procurement Policy Act (41 U.S.C. 403(1)).

(2) The term "head of the executive agency" means the head of an executive agency except that, in the case of a military department, the term means the Secretary of Defense.

SEC. 102. MINIMIZING SOLE-SOURCE CONTRACTS.

(a) PLANS REQUIRED.—Subject to subsection (c), the head of each executive agency covered by title III of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 251 et seq.) and the head of each agency covered by chapter 137 of title 10, United States Code, shall develop and implement a plan to minimize the use of contracts entered into using procedures other than competitive procedures by the agency concerned. The plan shall contain measurable goals and shall be completed and submitted to the Committee on Oversight and Government Reform of the House of Representatives, the Committee on Homeland Security and Governmental Affairs of the Senate, and the Committees on Appropriations of the House of Representatives and the Senate with a copy provided to the Comptroller General, not later than 1 year after the date of the enactment of this Act.

(b) COMPTROLLER GENERAL REVIEW.—The Comptroller General shall review the plans provided under subsection (a) and submit a report to Congress on the plans not later than 18 months after the date of the enactment of this Act.

(c) REQUIREMENT LIMITED TO CERTAIN AGENCIES.—The requirement of subsection (a) shall apply only to those agencies that awarded contracts in a total amount of at least $1,000,000,000 in the fiscal year preceding the fiscal year in which the report is submitted.

SEC. 103. MINIMIZING COST-REIMBURSEMENT TYPE CONTRACTS.

(a) PLANS REQUIRED.—Subject to subsection (c), the head of each executive agency covered by title III of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 251 et seq.) and the head of each agency covered by chapter 137 of title 10, United States Code, shall develop and implement a plan to minimize the use of cost-reimbursement type contracts by the agency concerned. The plan shall contain measurable goals and shall be completed and submitted to the Committee on Oversight and Government Reform of the House of Representatives, the Committee on Homeland Security and Governmental Affairs of the Senate, and the Committees on Appropriations of the House of Representatives and the Senate with a copy provided to the Comptroller General, not later than 1 year after the date of the enactment of this Act.

(b) COMPTROLLER GENERAL REVIEW.—The Comptroller General shall review the plans provided under subsection (a) and submit a report to Congress on the plans not later than 18 months after the date of the enactment of this Act.

(c) REQUIREMENT LIMITED TO CERTAIN AGENCIES.—The requirement of subsection (a) shall apply only to those agencies that awarded contracts in a total amount of at least $1,000,000,000 in the fiscal year preceding the fiscal year in which the report is submitted.

TITLE II—INCREASING CONTRACT OVERSIGHT

SEC. 201. PUBLIC DISCLOSURE OF JUSTIFICATION AND APPROVAL DOCUMENTS FOR NONCOMPETITIVE CONTRACTS.

(a) CIVILIAN AGENCY CONTRACTS.—

(1) IN GENERAL.—Section 303 of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 253) is amended by adding at the end the following new subsection:

"(j)(1) In the case of a procurement permitted by subsection (c), the head of an executive agency shall make publicly available, within 14 days after the award of the contract, the documents containing the justification and approval required by subsection (f)(1) with respect to the procurement.

"(2) The documents shall be made available on the website of the agency and through the Federal Procurement Data System.

"(3) This subsection does not require the public availability of information that is exempt from public disclosure under section 552(b) of title 5, United States Code.".

(2) CONFORMING AMENDMENT.—Section 303(f) of such Act is amended—

(A) by striking paragraph (4); and

(B) by redesignating paragraph (5) as paragraph (4).

(b) DEFENSE AGENCY CONTRACTS.—

(1) IN GENERAL.—Section 2304 of title 10, United States Code, is amended by adding at the end the following new subsection:

"(l)(1) In the case of a procurement permitted by subsection (c), the head of an agency shall make publicly available, within 14 days after the award of the contract, the documents containing the justification and approval required by subsection (f)(1) with respect to the procurement.

"(2) The documents shall be made available on the website of the agency and through the Federal Procurement Data System.

"(3) This subsection does not require the public availability of information that is exempt from public disclosure under section 552(b) of title 5.".

(2) CONFORMING AMENDMENT.—Section 2304(f) of such title is amended—

(A) by striking paragraph (4); and

(B) by redesignating paragraphs (5) and (6) as paragraphs (4) and (5), respectively.

SEC. 202. DISCLOSURE OF GOVERNMENT CONTRACTOR OVERCHARGES.

(a) QUARTERLY REPORT TO CONGRESS.—

(1) The head of each Federal agency or department shall submit to the chairman and ranking member of each committee specified in paragraph (2) on a quarterly basis a report that includes the following:

(A) A list of audits or other reports issued during the applicable quarter that describe contractor costs in excess of $1,000,000 that have been identified as unjustified, unsupported, questioned, or unreasonable under any contract, task or delivery order, or subcontract.

(B) The specific amounts of costs identified as unjustified, unsupported, questioned, or unreasonable and the percentage of their total value of the contract, task or delivery order, or subcontract.

(C) A list of audits or other reports issued during the applicable quarter that identify significant or substantial deficiencies in the performance of any contractor or in any business system of any contractor under any contract, task or delivery order, or subcontract.

(2) The report described in paragraph (1) shall be submitted to the Committee on Oversight and Government Reform of the House of Representatives, the Committee on Homeland Security and Governmental Affairs of the Senate, the Committees on Appropriations of the House of Representatives and the Senate, and other committees of jurisdiction.

(3) Paragraph (1) shall not apply to an agency or department with respect to a calendar quarter if no audits or other reports described in paragraph (1) were issued during that quarter.

(b) SUBMISSION OF INDIVIDUAL AUDITS.—The head of each Federal agency or department shall provide, within 14 days after a request in writing by the chairman or ranking member of any of the committees described in subsection (a)(2), a full and unredacted copy of any audit or other report described in subsection (a)(1).

SEC. 203. FUNDING CONTRACT OVERSIGHT.

(a) CIVILIAN AGENCY CONTRACTS.—Title III of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 251 et seq.) is amended by adding at the end the following new section:

"SEC. 318. REQUIREMENT FOR 1 PERCENT OF CONTRACT AMOUNTS TO BE USED FOR CONTRACT PERSONNEL, ADMINISTRATION, OVERSIGHT, AND PLANNING.

"(a) REQUIREMENT.—In addition to the sums used for the purposes listed in this section during fiscal year 2006, each fiscal year, the head of an executive agency shall ensure that the agency uses an additional amount equal to 1 percent of the aggregate amount of contracts entered into by the agency during that fiscal year for the following purposes:

"(1) Hiring and training of acquisition workforce personnel.

"(2) Contract planning.

"(3) Contract administration.

"(4) Contract oversight, including audits and enforcement.

"(b) GUIDELINES.—The Administrator for Federal Procurement Policy shall issue guidelines for executive agencies on the implementation of this section. Such guidelines shall ensure that the amount described in subsection (a) is additional funding above the fiscal year 2006 level. Such guidelines also shall provide direction to agencies on identifying priorities for the use of the additional funds.".

(b) DEFENSE CONTRACTS.—

(1) IN GENERAL.—Chapter 141 of title 10, United States Code, is amended by adding at the end the following new section:

"§ 2410q. Requirement for 1 percent of contract amounts to be used for contract personnel, administration, oversight, and planning

"(a) REQUIREMENT.—In addition to the sums used for the purposes listed in this section during fiscal year 2006, each fiscal year, the head of an agency (as defined in section 2302(1) of this title) shall ensure that the agency uses an additional amount equal to 1 percent of the aggregate amount of contracts entered into by the agency during that fiscal year for the following purposes:

"(1) Hiring and training of acquisition workforce personnel.

"(2) Contract planning.

"(3) Contract administration.

"(4) Contract oversight, including audits and enforcement.

"(b) GUIDELINES.—The Administrator for Federal Procurement Policy shall issue guidelines for agencies on the implementation of this section. Such guidelines shall ensure that the amount described in subsection (a) is additional funding above the fiscal year 2006 level. Such guidelines also shall provide direction to agencies on identifying priorities for the use of the additional funds.".

(2) CLERICAL AMENDMENT.—The table of sections at the beginning of such chapter is amended by adding at the end the following new item:

"2410q. Requirement for 1 percent of contract amounts to be used for contract personnel, administration, oversight, and planning.".

SEC. 204. STUDY OF ACQUISITION WORKFORCE.

(a) REQUIREMENT FOR STUDY.—The Administrator for Federal Procurement Policy shall conduct a study of the composition, scope, and functions of the Government-wide acquisition workforce and develop a comprehensive definition of, and method of measuring, such workforce.

(b) REPORT.—Not later than 1 year after the date of the enactment of this Act, the Administrator shall submit to the relevant congressional committees a report on

the results of the study required by subsection (a), with such findings and recommendations as the Administrator determines appropriate.

SEC. 205. REPEAL OF SUNSET OF TRAINING FUND.

Subparagraph (H) of section 37(h)(3) of the Office of Federal Procurement Policy Act (41 U.S.C. 433(h)(3)) is repealed.

TITLE III—PROMOTING INTEGRITY IN CONTRACTING

SEC. 301. ADDITIONAL PROVISIONS RELATING TO PROCUREMENT OFFICIALS.

(a) ELIMINATION OF LOOPHOLES THAT ALLOW FORMER FEDERAL OFFICIALS TO ACCEPT COMPENSATION FROM CONTRACTORS OR RELATED ENTITIES.—Section 27(d) of the Office of Federal Procurement Policy Act (41 U.S.C. 423(d)) is amended—

(1) in paragraph (1)—

(A) by striking "or consultant" and inserting "consultant, lawyer, or lobbyist";

(B) in subparagraph (C), by striking "personally made for the Federal agency—" and inserting "participated personally and substantially in—"; and

(2) by amending paragraph (2) to read as follows:

"(2) Paragraph (1) shall not prohibit a former official of a Federal agency from accepting compensation from any division or affiliate of a contractor that does not produce the same or similar products or services as the entity of the contractor that is responsible for the contract referred to in subparagraph (A), (B), or (C) of such paragraph if the agency's designated ethics officer determines that—

"(A) the offer of compensation is not a reward for any action described in paragraph (1); and

"(B) acceptance of the compensation is appropriate and will not affect the integrity of the procurement process.".

(b) REQUIREMENT FOR FEDERAL PROCUREMENT OFFICERS TO DISCLOSE JOB OFFERS MADE ON BEHALF OF RELATIVES.—Section 27(c)(1) of such Act (41 U.S.C. 423(c)(1)) is amended by inserting after "that official" the following: "or for a relative of that official (as defined in section 3110 of title 5, United States Code)".

(c) REQUIREMENT ON AWARD OF GOVERNMENT CONTRACTS TO FORMER EMPLOYERS.—Section 27 of such Act (41 U.S.C. 423) is amended by adding at the end the following new subsection:

"(i) PROHIBITION ON INVOLVEMENT BY CERTAIN FORMER CONTRACTOR EMPLOYEES IN PROCUREMENTS.—An employee of the Federal Government who is a former employee of a contractor with the Federal Government shall not be personally and substantially involved with any award of a contract to the employee's former employer, or the administration of such a contract, for the one-year period beginning on the date on which the employee leaves the employment of the contractor, unless the employee has received a waiver from the agency's designated ethics officer. In determining whether to issue a waiver, the designated ethics officer shall take into account the agency's need for the involvement of the employee and the impact a waiver would have on public confidence in the integrity of the procurement process.".

(d) REGULATIONS.—Section 27 of such Act (41 U.S.C. 423) is further amended by adding at the end the following new subsection:

"(j) REGULATIONS.—The Administrator, in consultation with the Director of the Office of Government Ethics, shall—

"(1) promulgate regulations to carry out and ensure the enforcement of this section; and

"(2) monitor and investigate individual and agency compliance with this section.".

(e) EFFECTIVE DATE.—The amendments made by this section shall take effect on the date of the enactment of this Act, except that the amendment made by subsection (a)(1)(B) shall apply to individuals who terminate Government service after March 31, 2007.

PURPOSE AND SUMMARY

H.R. 1362, the "Accountability in Contracting Act," was introduced by Rep. Waxman on March 6, 2007. The measure would make several changes to federal acquisition laws to increase transparency and accountability in federal contracting, to require agen-

cies to limit the use of certain types of abuse-prone contracts, and to promote integrity in the acquisition workforce. The bill would limit the length of certain noncompetitive contracts and require large federal agencies to develop plans to minimize the use of noncompetitive contracts and cost-reimbursement type contracts. In addition the bill would require the public disclosure of justification and approval documents required for noncompetitive contracts and require reports to Congress on certain contract audits. Finally, the bill contains a number of provisions which would improve the acquisition workforce.

BACKGROUND AND NEED FOR LEGISLATION

Under the Bush Administration, spending on federal contracts has grown by $175 billion, making federal contracts the fastest growing component of the federal budget. The federal government now spends nearly 40 cents of every discretionary dollar on contracts with private companies, a record level. This surge in contract spending has enriched some, but it has come at a steep cost to taxpayers through rising waste, fraud, abuse, and mismanagement.

Spending on sole-source and other noncompetitive contracts has more than doubled over the last five years. Over the last five years, the Administration has jeopardized taxpayer interests and squandered hundreds of millions of dollars by giving private contractors exclusive control over huge portions of the reconstruction effort in Iraq. The Administration has justified the award of lucrative sole-source contracts by citing urgent and compelling needs, but then allowed these contracts to continue years after the emergency has passed. Cost-reimbursement type contracts leave the taxpayer vulnerable to wasteful spending by providing contractors with little or no incentive to control costs. Between 2000 and 2005 the use of this type of contract has risen 75%. The Administration has also hidden contractor overcharges from Congress, international auditors, and the public, impeding oversight and diminishing accountability.

And too often the independence of procurement officials has been compromised by illegal relationships with government contractors, such as when Darleen Druyun, the former chief acquisition official for the Air Force, negotiated a lucrative deal to lease aircraft from Boeing in exchange for future employment.

All of these problems have been compounded by an insufficient acquisition workforce to both properly award and adequately oversee federal contracts, which has been a large and recurring problem for a number of years. At a Committee hearing on February 8, 2007, Inspector General Richard Skinner testified:

> The government's greatest exposure to fraud, waste and abuse is undoubtedly in the area of procurement. As already pointed out by members of this committee, the problem is not a new one. It dates back to the federal government's nearsighted policies of the early '90s to reduce the federal workforce. While acquisition management capabilities were being downsized, the procurement workload was on the rise.

Over the last five years, major government initiatives—including border and homeland security, the reconstruction in Iraq, and the recovery effort after Hurricane Katrina—have been undermined by billions in wasteful spending. In total, contracts collectively worth

over $800 billion have experienced significant overcharges, contract abuse, or mismanagement under the current Administration.

LEGISLATIVE HISTORY

H.R. 1362, the "Accountability in Contracting Act," was introduced by Rep. Waxman on March 6, 2007. The Committee held a business meeting on the bill on March 8, 2007, at which a number of amendments were considered and the bill was favorably reported.

SECTION-BY-SECTION

Sec. 101 would limit the length of certain contracts awarded without competition. One case in which the award of such contracts is permitted is if an agency faces an "unusual and compelling urgency" for the goods or services (41 U.S.C. 253(c)(2)). The bill would limit the length of a sole-source contract awarded using this authority to a maximum of 240 days, unless the length limitation is waived by the head of the agency due to exceptional circumstances.

Sec. 102 would require agencies that spend more than $1 billion on federal contracts to develop and implement a plan to minimize the use of sole-source contracts. The plan must contain measurable goals and be submitted to Congress within one year of enactment. The section also requires the plan to be submitted to the Comptroller General, who is required to submit an analysis of the plan to Congress within 18 months.

Sec. 103 would require federal agencies that spend more than $1 billion on federal contracts to develop and implement a plan to minimize the use of cost-reimbursement type contracts. The plan must contain measurable goals and be submitted to Congress within one year of enactment. The section also requires the plan to be submitted to the Comptroller General, who is required to submit an analysis of the plan to Congress within 18 months.

Sec. 201 would require justification and approval documents to be made publicly available within 14 days of the award of a noncompetitive contract. Justification and approval documents are required when an agency awards such a contract and explains why the agency did not require full and open competition. Classified, business-sensitive, and other information exempt from disclosure under the Freedom of Information Act is exempt from the requirements of this section.

Sec. 202 would require certain contract overcharges to be reported to Congress. Agencies would be required to report on a quarterly basis all contractor costs in excess of $1 million that are unjustified, unsupported, questioned, or unreasonable. The section also requires unredacted copies of any audit finding such costs to be submitted to Congress upon request.

Sec. 203 would require agencies devote at least an additional 1% of their procurement budget to contract oversight, planning, and administration. It also requires the Administrator for Federal Procurement Policy to issue implementing guidelines.

Sec. 204 would require the Administrator for Federal Procurement Policy to conduct a study of the federal acquisition workforce and develop a comprehensive definition of, and method of measuring, this workforce.

Sec. 205 would repeal 41 U.S.C. 433(h)(3), which terminates the authorization for an existing fund for training the acquisition workforce.

Sec. 301 would amend section 27 of the Office of Federal Procurement Policy Act (41 U.S.C. 423), close loopholes in the current "revolving door" laws applicable to government contracting officials. The bill would prevent a government contracting official who awarded a contract to a private company from working as a lobbyist or lawyer for the company during a one-year cooling off period. The bill would also prohibit contracting officials from negotiating employment for their relatives. In addition, the bill would prohibit for one year a procurement official who is a former employee of a private-sector contractor from working on the award or management of a contract held by the official's former employee, subject to a waiver provision.

EXPLANATION OF AMENDMENTS

Five amendments to the bill were considered. Rep. Waxman offered an amendment in the nature of a substitute which added two provisions to the bill, sections 204 and 205, which are discussed in the section-by-section analysis above. The amendment also added a new requirement that the Administrator for Federal Procurement Policy issue guidelines to implement the funding provisions of section 203. The amendment was adopted by voice vote. Rep. Davis offered an amendment which would have deleted the requirement in the bill that agencies report on questioned costs over one million dollars, and replaced it with a requirement that unallowable costs be reported. This amendment was defeated on a voice vote. Rep. Davis also offered an amendment to create a government/industry exchange program, which was ruled non-germane. Rep. Davis also offered an amendment to strike section 301, which was defeated on a voice vote. Finally, Rep. Davis offered an amendment which would amend section 301 of the bill to strike the two-year post-employment restrictions on contracting officers and permit a waiver of the bill's requirement that individuals can not be involved in acquisitions that involve their former private sector employers. This amendment was adopted by voice vote. The bill was ordered reported on a voice vote.

COMMITTEE CONSIDERATION

On Thursday, March 8, 2007, the Committee ordered the bill reported to the House by a voice vote.

ROLL CALL VOTES

There were no roll call votes on the bill.

APPLICATION OF LAW TO THE LEGISLATIVE BRANCH

Section 102(b)(3) of Public Law 104–1 requires a description of the application of this bill to the legislative branch where the bill relates to the terms and conditions of employment or access to public services and accommodations. This bill provides enhanced transparency to the operations of the executive branch. As such this bill

does not relate to employment or access to public services and accommodations.

STATEMENT OF OVERSIGHT FINDINGS AND RECOMMENDATIONS OF THE COMMITTEE

In compliance with clause 3(c)(1) of rule XIII and clause (2)(b)(1) of rule X of the Rules of the House of Representatives, the Committee's oversight findings and recommendations are reflected in the descriptive portions of this report.

STATEMENT OF GENERAL PERFORMANCE GOALS AND OBJECTIVES

In accordance with clause 3(c)(4) of rule XIII of the Rules of the House of Representatives, the Committee's performance goals and objectives are reflected in the descriptive portions of this report, and include making federal acquisition more transparent and accountable, limiting the use of abuse-prone contracts, and promoting integrity in the acquisition workforce.

CONSTITUTIONAL AUTHORITY STATEMENT

Under clause 3(d)(1) of rule XIII of the Rules of the House of Representatives, the Committee must include a statement citing the specific powers granted to Congress to enact the law proposed by H.R. 1362. Article I, Section 8, Clause 18 of the Constitution of the United States grants the Congress the power to enact this law.

FEDERAL ADVISORY COMMITTEE ACT

The Committee finds that the legislation does not establish or authorize the establishment of an advisory committee within the definition of 5 U.S.C. App., Section 5(b).

UNFUNDED MANDATE STATEMENT

Section 423 of the Congressional Budget and Impoundment Control Act (as amended by Section 101(a)(2) of the Unfunded Mandate Reform Act, P.L. 104–4) requires a statement whether the provisions of the report include unfunded mandates. In compliance with this requirement the Committee has received a letter from the Congressional Budget Office included herein.

EARMARK IDENTIFICATION

H.R. 1362 does not contain any congressional earmarks, limited tax benefits, or limited tariff benefits as defined in clause 9(d), 9(e), or 9(f) of rule XXI.

COMMITTEE ESTIMATE

Clause 3(d)(2) of rule XIII of the Rules of the House of Representatives requires an estimate and a comparison by the Committee of the costs that would be incurred in carrying out H.R. 1362. However, clause 3(d)(3)(B) of that rule provides that this requirement does not apply when the Committee has included in its report a timely submitted cost estimate of the bill prepared by the Director of the Congressional Budget Office under section 402 of the Congressional Budget Act.

BUDGET AUTHORITY AND CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

With respect to the requirements of clause 3(c)(2) of rule XIII of the Rules of the House of Representatives and section 308(a) of the Congressional Budget Act of 1974 and with respect to requirements of clause (3)(c)(3) of rule XIII of the Rules of the House of Representatives and section 402 of the Congressional Budget Act of 1974, the Committee has received the following cost estimate for H.R. 1362 from the Director of Congressional Budget Office:

MARCH 12, 2007.

Hon. Henry A. Waxman,
Chairman, Committee on Oversight and Government Reform, House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 1362, the Accountability in Contracting Act.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Matthew Pickford.

Sincerely,

PETER R. ORSZAG,
Director.

Enclosure.

H.R. 1362—Accountability in Contracting Act

Summary: H.R. 1362 would amend federal contracting rules. Specifically the legislation would require federal agencies to limit the length of noncompetitive contracts and limit the use of sole-source and cost-reimbursement contracts when possible. H.R. 1362 also would authorize an increase in funds used to pay for contract oversight, planning, and administration equal to 1 percent of the value of an agency's contracts. The legislation would require various reports to the Congress on noncompetitive contracts and contractor overcharges and amend employment restrictions on federal procurement officials.

CBO estimates that implementing H.R. 1362 would cost $20 billion over the 2008–2012 period, assuming appropriation of the necessary amounts to provide additional resources for contract oversight, planning, and administration. That estimate does not include any costs or savings that could result from implementing the legislation's provisions regarding the use of noncompetitive and cost-reimbursement contracts. CBO has no basis for estimating any costs or savings for those provisions. Enacting the bill could affect revenues by increasing collections of civil penalties, but CBO estimates that any increase in revenue collection would not be significant. Enacting the bill would not affect direct spending.

H.R. 1362 contains no intergovernmental mandates as defined in the Unfunded Mandates Reform Act (UMRA) and would not affect the budgets of state, local, or tribal governments.

H.R. 1362 would impose a private-sector mandate, as defined in UMRA, on certain former federal officials that were substantially involved in the awarding of contracts. CBO expects that the direct cost of complying with the mandate would fall well below the an-

nual threshold for private-sector mandates ($131 million in 2007, adjusted annually for inflation).

Estimated cost to the federal government: The estimated budgetary impact of H.R. 1362 is shown in the following table. The cost of this legislation falls within all budget functions that provide contract funding.

	By fiscal year, in millions of dollars—				
	2008	2009	2010	2011	2012
SPENDING SUBJECT TO APPROPRIATION					
Estimated Authorization Level	4,000	4,070	4,145	4,220	4,295
Estimated Outlays	3,440	3,900	4,090	4,165	4,240

Basis of estimate: H.R. 1362 would amend federal contracting rules and authorize the appropriation of additional funds for contract oversight, planning, and administration. CBO estimates that implementing H.R. 1362 would cost about $20 billion over the 2008–2012 period, assuming appropriation of the necessary funds. For this estimate, CBO assumes that the bill will be enacted before the start of fiscal year 2008 and that spending will follow historical patterns for contract oversight activity.

Spending subject to appropriation

Contract Oversight. Section 203 would authorize the appropriation of additional funds for contract oversight, planning, and administration equivalent to 1 percent of the value of contract awards. Those funds would be used for hiring and training of acquisition workforce personnel, as well as contract planning, administration, and oversight. Based on information from the General Services Administration, CBO estimates that federal government awards contracts with a value of about $400 billion annually. Thus, CBO estimates that implementing H.R. 1362 would require additional appropriations of about $4 billion annually (with adjustments for inflation). As a result, we estimate a cost of about $20 billion over the 2008–2012 period, assuming appropriation of the necessary amounts, and that the value of federal contracts increases at the rate of anticipated inflation.

Federal Contracting Rules. H.R. 1362 would amend various contracting rules regarding the use of noncompetitive, sole-source, and cost-reimbursement contracts by the federal government. This would include restrictions on the contract period for noncompetitive contracts and limiting the use of sole-source and cost-reimbursement contracts.

The provisions of the legislation that would impose restrictions on the length of noncompetitive contracts and limit the use of sole-source and cost-reimbursement contracts could increase costs for contract administration, but could also result in the use of other types of contract procurements that may lower costs to the government. CBO has no basis for estimating the net impact on the budget of those provisions. The circumstances involving the use of cost-reimbursement and noncompetitive contracts by federal agencies and the potential to use other types of contracts in those situations is often unique. At this time, CBO does not have sufficient information relating to the use of noncompetitive and cost-reimbursement

contracts to determine the magnitude of any cost or savings that could result from implementing H.R. 1362.

Other Provisions. The legislation also would require federal agencies to report to the Congress on noncompetitive and contractor overcharges. In addition, H.R. 1362 would require reviews and reports by the Government Accountability Office on the use of federal contracts. H.R. 1362 would amend employment restrictions on federal procurement officials. Based on the cost of similar activities, CBO estimates that those provisions would increase federal administrative costs by a few million dollars a year.

Revenues

Enacting H.R. 1362 could affect federal revenues as a result of new civil penalties for violations of procurement employment restrictions. Collections of civil penalties are recorded in the budget as revenues. CBO estimates, however, that any change in revenues that would result from enacting the bill would not be significant.

Estimated impact on state, local, and tribal governments: H.R. 1362 contains no intergovernmental mandates as defined in UMRA and would not affect the budgets of state, local, or tribal governments.

Estimate impact on the private sector: H.R. 1362 would impose a private-sector mandate, as defined in UMRA, on certain former federal officials that were substantially involved in government contracts awarded in excess of $10 million. The bill would expand an existing one-year restriction that would prohibit those officials from accepting compensation as an employee, officer, director, or consultant from contractors receiving such awards. The mandate would apply to those officials that leave government service after March 31, 2007, but before the date of enactment. The cost of the mandate would be the potential loss of net income resulting from the restriction on those former federal officials. Because the bill would limit the restriction on compensation to apply to lines of business directly related to the awarded contract, CBO expects the direct cost of complying with the mandate would be minimal and would fall below the annual threshold established in UMRA ($131 million in 2007, adjusted annually for inflation).

Estimate prepared by: Federal costs: Matthew Pickford. Impact on state, local, and tribal governments: Lisa Ramirez-Branum. Impact on the private sector: Amy Petz.

Estimate approved by: Peter H. Fontaine, Deputy Assistant Director for Budget Analysis.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

FEDERAL PROPERTY AND ADMINISTRATIVE SERVICES ACT OF 1949

TITLE III—PROCUREMENT PROCEDURE

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SEC. 303. COMPETITION REQUIREMENTS.

(a) * * *

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(f)(1) * * *

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[(4) The justification required by paragraph (1)(A) and any related information shall be made available for inspection by the public consistent with the provisions of section 552 of title 5, United States Code.]

[(5)] *(4)* In no case may an executive agency—

(A) * * *

* * * * * * *

(j)(1) In the case of a procurement permitted by subsection (c), the head of an executive agency shall make publicly available, within 14 days after the award of the contract, the documents containing the justification and approval required by subsection (f)(1) with respect to the procurement.

(2) The documents shall be made available on the website of the agency and through the Federal Procurement Data System.

(3) This subsection does not require the public availability of information that is exempt from public disclosure under section 552(b) of title 5, United States Code.

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SEC. 318. REQUIREMENT FOR 1 PERCENT OF CONTRACT AMOUNTS TO BE USED FOR CONTRACT PERSONNEL, ADMINISTRATION, OVERSIGHT, AND PLANNING.

(a) REQUIREMENT.—In addition to the sums used for the purposes listed in this section during fiscal year 2006, each fiscal year, the head of an executive agency shall ensure that the agency uses an additional amount equal to 1 percent of the aggregate amount of contracts entered into by the agency during that fiscal year for the following purposes:

(1) Hiring and training of acquisition workforce personnel.

(2) Contract planning.

(3) Contract administration.

(4) Contract oversight, including audits and enforcement.

(b) GUIDELINES.—The Administrator for Federal Procurement Policy shall issue guidelines for executive agencies on the implementation of this section. Such guidelines shall ensure that the amount described in subsection (a) is additional funding above the fiscal

year 2006 level. Such guidelines also shall provide direction to agencies on identifying priorities for the use of the additional funds.

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TITLE 10, UNITED STATES CODE

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Subtitle A—General Military Law

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PART IV—SERVICE, SUPPLY, AND PROCUREMENT

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CHAPTER 137—PROCUREMENT GENERALLY

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§ 2304. CONTRACTS: COMPETITION REQUIREMENTS

(a) * * *

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(f)(1) * * *

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[(4) The justification required by paragraph (1)(A) and any related information, and any document prepared pursuant to paragraph (2)(E), shall be made available for inspection by the public consistent with the provisions of section 552 of title 5.**]**

[(5)**]** *(4)* In no case may the head of an agency—

(A) * * *

* * * * * * *

[(6)**]** *(5)*(A) The authority of the head of a procuring activity under paragraph (1)(B)(ii) may be delegated only to an officer or employee who—

(i) * * *

* * * * * * *

(l)(1) In the case of a procurement permitted by subsection (c), the head of an agency shall make publicly available, within 14 days after the award of the contract, the documents containing the justification and approval required by subsection (f)(1) with respect to the procurement.

(2) The documents shall be made available on the website of the agency and through the Federal Procurement Data System.

(3) This subsection does not require the public availability of information that is exempt from public disclosure under section 552(b) of title 5.

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CHAPTER 141—MISCELLANEOUS PROCUREMENT PROVISIONS

§ 2410q. Requirement for 1 percent of contract amounts to be used for contract personnel, administration, oversight, and planning

(a) REQUIREMENT.—In addition to the sums used for the purposes listed in this section during fiscal year 2006, each fiscal year, the head of an agency (as defined in section 2302(1) of this title) shall ensure that the agency uses an additional amount equal to 1 percent of the aggregate amount of contracts entered into by the agency during that fiscal year for the following purposes:

(1) Hiring and training of acquisition workforce personnel.

(2) Contract planning.

(3) Contract administration.

(4) Contract oversight, including audits and enforcement.

(b) GUIDELINES.—The Administrator for Federal Procurement Policy shall issue guidelines for agencies on the implementation of this section. Such guidelines shall ensure that the amount described in subsection (a) is additional funding above the fiscal year 2006 level. Such guidelines also shall provide direction to agencies on identifying priorities for the use of the additional funds.

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OFFICE OF FEDERAL PROCUREMENT POLICY ACT

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SEC. 27. RESTRICTIONS ON DISCLOSING AND OBTAINING CONTRACTOR BID OR PROPOSAL INFORMATION OR SOURCE SELECTION INFORMATION.

(a) * * *

* * * * * * *

(c) ACTIONS REQUIRED OF PROCUREMENT OFFICERS WHEN CONTACTED BY OFFERORS REGARDING NON-FEDERAL EMPLOYMENT.—(1) If an agency official who is participating personally and substantially in a Federal agency procurement for a contract in excess of the simplified acquisition threshold contacts or is contacted by a person who is a bidder or offeror in that Federal agency procurement regarding possible non-Federal employment for that official *or for a relative of that official (as defined in section 3110 of title 5, United States Code)*, the official shall—

(A) * * *

* * * * * * *

(d) PROHIBITION ON FORMER OFFICIAL'S ACCEPTANCE OF COMPENSATION FROM CONTRACTOR.—(1) A former official of a Federal

agency may not accept compensation from a contractor as an employee, officer, director, [or consultant] *consultant, lawyer, or lobbyist* of the contractor within a period of one year after such former official—

(A) * * *

* * * * * * *

(C) [personally made for the Federal agency—] *participated personally and substantially in—*

(i) * * *

* * * * * * *

[(2) Nothing in paragraph (1) may be construed to prohibit a former official of a Federal agency from accepting compensation from any division or affiliate of a contractor that does not produce the same or similar products or services as the entity of the contractor that is responsible for the contract referred to in subparagraph (A), (B), or (C) of such paragraph.]

(2) Paragraph (1) shall not prohibit a former official of a Federal agency from accepting compensation from any division or affiliate of a contractor that does not produce the same or similar products or services as the entity of the contractor that is responsible for the contract referred to in subparagraph (A), (B), or (C) of such paragraph if the agency's designated ethics officer determines that—

(A) the offer of compensation is not a reward for any action described in paragraph (1); and

(B) acceptance of the compensation is appropriate and will not affect the integrity of the procurement process.

* * * * * * *

(i) PROHIBITION ON INVOLVEMENT BY CERTAIN FORMER CONTRACTOR EMPLOYEES IN PROCUREMENTS.—An employee of the Federal Government who is a former employee of a contractor with the Federal Government shall not be personally and substantially involved with any award of a contract to the employee's former employer, or the administration of such a contract, for the one-year period beginning on the date on which the employee leaves the employment of the contractor, unless the employee has received a waiver from the agency's designated ethics officer. In determining whether to issue a waiver, the designated ethics officer shall take into account the agency's need for the involvement of the employee and the impact a waiver would have on public confidence in the integrity of the procurement process.

(j) REGULATIONS.—The Administrator, in consultation with the Director of the Office of Government Ethics, shall—

(1) promulgate regulations to carry out and ensure the enforcement of this section; and

(2) monitor and investigate individual and agency compliance with this section.

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SEC. 37. ACQUISITION WORKFORCE.

(a) * * *

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(h) EDUCATION AND TRAINING.—
(1) * * *

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(3) ACQUISITION WORKFORCE TRAINING FUND.—(A) * * *

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[(H) This paragraph shall cease to be effective five years after the date of the enactment of the National Defense Authorization Act for Fiscal Year 2004.]

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ADDITIONAL VIEWS OF RANKING MEMBER DAVIS

H.R. 1362 would make a number of changes to the procurement laws in an attempt to reform our acquisition system through a series of restrictions and reports that are geared towards greater regulation and oversight. More specifically, the legislation would, in part, (1) limit the duration of contracts awarded under urgent conditions, (2) require agency reports regarding the use of cost-type and sole-source contracts, (3) require additional reports to Congress on audit reports under cost-type contracts and, (4) broaden the reach of current limitations on post-employment opportunities for our acquisition workforce as well as limit the ability of acquisition workers hired by the government from the private sector to participate in certain acquisition activities.

H.R. 1362 also includes two provisions that Chairman Waxman added at my request, both intended to strengthen the federal acquisition workforce through better training and management. Section 204 would require the Administrator for Federal Procurement Policy to come up with a government-wide definition for "acquisition workforce" and section 205 would make permanent the Acquisition Workforce Training Fund, first enacted in the Services Acquisition Reform Act, which I authored.

During Committee consideration of H.R. 1362, I offered three amendments which would have helped the legislation address some of the real challenges facing our acquisition system. Unfortunately, none of them were accepted. The problems the amendments sought to address were primarily the result of management difficulties exacerbated by an overburdened, understaffed and undertrained workforce.

First, I offered an amendment to section 202. That section would require agencies to provide Congress reports on preliminary contract audits that contain "questionable" contractor costs above $1 million—in the auditor's opinion. I believe, however, such reports will present a distorted and incomplete picture of the management of cost-type contracts. Contract auditors are critical cogs in the management system. They write audit reports which are submitted to aid the contracting officer in making his final determination of whether particular costs are reasonable and consistent with applicable law and the contract terms—and therefore permitted or "allowable" under the contract. The key here is that the contracting officer—not the auditor—makes the final determination of whether costs are reasonable and allowable based on the assistance of those auditors and other experts. Then, after carefully considering all the relevant facts and circumstances, the contracting officer makes his or her determination.

My amendment would have provided for quarterly reports to Congress on the outcomes of the oversight process, requiring a report to Congress on costs which have been determined by the con-

tracting officer to be "unallowable." These reports would have provided an accurate picture of costs actually billed to the government that the contracting officer determined the government would not pay under the applicable laws and regulations.

There is no question there are significant challenges in ensuring there are adequate controls over cost-type contracts—and my amendment would have presented the real "overcharges" for all to see. It may not make headlines or provide fodder for websites, but it would have provided a solid basis for congressional oversight.

Second, I offered an amendment that would have created an acquisition professional exchange program to permit the exchange of high-performing acquisition professionals between the federal government and participating private-sector concerns. The program would have provided both public and private sector employees invaluable first-hand experience and insight to bring back to their respective organizations. The program contains extensive ethics protections, modeled after my Digital Tech Corps Act, enacted in 2002, which provided for the exchange of technology professionals between the private and public sectors.

We have heard time and time again from the Office of Federal Procurement Policy (OFPP), from the Government Accountability Office, from government employee and contractor organizations, that the lack of properly trained and skilled acquisition workers is the overriding challenge faced by our acquisition system today. This program is a common-sense approach that would provide desperately needed business skills to our workforce at a minimal cost.

Third, I offered an amendment to strike the provisions of title III in the bill. The provisions in title III would broaden the reach and lengthen the duration of current limitations on post-employment opportunities for our acquisition workforce as well as limit the ability of acquisition workers hired by the government from the private sector to participate in certain acquisition activities. This Committee voted on these provisions twice before. It marked up the Executive Branch Reform Act in Committee last year (H.R. 5112) with these exact same provisions and again earlier this year (H.R. 984).

I supported these provisions in the past, and I have been criticized roundly for it. I have subsequently heard from trade associations and government officials alike on the potential problems that these provisions will cause. Specifically, the concern is that they will hamper the government's ability to recruit and retain the brightest personnel in our acquisition workforce. At a time when we must be looking for ways to retain qualified acquisition personnel who are at or approaching retirement age, and, at the same time, must be looking for effective ways to recruit new, qualified people, we are instead imposing new restrictions on these federal employees—restrictions which could have a detrimental impact on the executive branch's ability to recruit and retain the brightest personnel for the acquisition workforce.

Our committee has held several oversight hearings on troubled agency acquisition programs. The witnesses have noted this very problem themselves. Comptroller General David Walker testified that we lacked a sufficient number of trained acquisition workers to manage the critical contracts needed to support or troops and to rebuild Iraq's infrastructure. Department of Homeland Security of-

ficials testified about woefully understaffed programs such as SBInet and Deepwater. DHS IG Richard Skinner said in his testimony that contractors outnumber Federal employees on the Deepwater program. We all know the reason: we simply do not have the trained federal workers to do the job.

We also received a letter from OFPP Administrator Paul Dennett in which he says, "The loss of so many individuals with a deep, ingrained institutional knowledge of their agency has the potential to cause a lapse or pause of service delivery." He believes the provisions in this bill would minimize the efforts of his office to improve recruitment, retention, and expertise of the government-wide acquisition workforce. Mr. Dennett's letter also notes that the National Academy of Science claims that the "laws restricting post-Government employment have become the biggest disincentive to public service." And, unfortunately, the provisions in this bill do just that. We are discouraging people from seeking employment with the federal government at a time when our acquisition workforce is—to put it nicely—strained. We have also received a letter from the Office of Government Ethics (OGE) opposing these provisions. OGE claims that a number of these provisions overlap with current rules and regulations, thus creating a confusing web of restrictions under which federal employees must abide.

While I wholeheartedly support the desire to promote integrity, transparency, and accountability in government, I believe these provisions go too far. There are too many good people working for this government for us to pass restrictive and onerous provisions based on the misdeeds of a handful of employees. We need to promote the natural churn of employees between the public and private sector instead of trying to stymie it.

After the amendment to strike title III was defeated, I offered another amendment to this title that would shorten the two year post-employment restrictions on contracting officers to one year and permit a waiver of the restriction on the ability of acquisition workers hired by the government from the private sector to participate in certain acquisition activities. The amendment would also shorten the duration of the activity restriction from two years to one year. This amendment, which was adopted by voice, will lessen the impact of these provisions. It goes part of the way towards addressing my concerns about the negative affect of such restrictions on our ability to recruit, hire and retain the skilled acquisition workforce our nation so desperately needs.

TOM DAVIS.

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